

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If we, OSM, on the basis of any information available to us, including information submitted by any person, have reason to believe that a State-issued permit meets the criteria for an improvidently issued permit under § 773.21 of this chapter, or the State regulatory program equivalent, and the State has failed to take appropriate action on the permit under the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter, we must—

(1) Issue a notice, by certified mail, to the State, to you, the permittee, and to any person providing information under paragraph (a) of this section. The notice will state in writing the reasons for our belief that your permit was improvidently issued. The notice also will request the State to take appropriate action, as specified in paragraph (b) of this section, within 10 days.

(2) Post the notice at our office closest to the permit area and on the AVS Office Internet home page (Internet address: <http://www.avs.osmre.gov>).

(b) *State response.* Within 10 days after receiving notice under paragraph (a) of this section, the State must demonstrate to us in writing that either—

(1) The permit does not meet the criteria of § 773.21 of this chapter or the State regulatory program equivalent;

(2) The State is in compliance with the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter; or

(3) The State has good cause for not complying with the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter. For purposes of this section, good cause has the same meaning as in § 842.11(b)(1)(ii)(B)(4) of this chapter, except that good cause does not include the lack of State program equivalents of §§ 773.21 through 773.23 of this chapter.

(c) *Notice of Federal inspection.* If we find that the State has failed to make the demonstration required by paragraph (b) of this section, we must initiate a Federal inspection under paragraph (d) of this section to determine if your permit was improvidently issued under the criteria in § 773.21 of this